Supreme Court, U.S.
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Docket No. _____

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**In The**

**Supreme Court of the United States**

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In Re: Kurt Rehberg, Individually, and as Next Friend on behalf of his daughter, the minor child S.R.,
Petitioners,

vs.

Kathy Cochrane, fka Kathy Ryan,
Respondent.

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**On Petition For Writ Of Certiorari To The Supreme Court Of The State Of Florida**

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# PETITION FOR WRIT OF CERTIORARI

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Kurt Rehberg, Petitioner Pro Se
Individually and as Next Friend
on behalf of his daughter, the
minor child S.R.
P.O. Box 14151
Bradenton, Florida 34280
(941) 746-0200

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48 pp

## QUESTIONS PRESENTED FOR REVIEW

1. What are a minor child's Constitutional rights concerning participation in the lives of it's natural parents and/or extended families; and how are those rights balanced against the natural parent's Constitutional liberty rights?

2. Is there a Constitutional "presumption of joint custody" for natural parents concerning their children; and is the State required to use "the least restrictive manner for accomplishing it's goals in exercising their compelling interests" concerning child custody, therefore adopting the lesser restrictive policy of "presumption of joint custody" over the more restrictive policy and practice of one custodial parent?

3. Does a minor child possess a Constitutional right to be free from State interference by having their uncontested established paternity left undisturbed by a State paternity action?

4. Does the Florida judiciary have subject matter jurisdiction for a paternity action in the case when legal paternity of a child has already been established by "law or otherwise" and there is no contestment of who the father is; and are Florida Statute 742.011, and Federal Statute U.S.C. Title 42, Section 666, (5)(E), specific bars for the Florida judiciary in obtaining subject matter jurisdiction for a paternity action in an uncontested established paternity?

5. Was the Florida Judiciary in violation of "separation of powers" when it claimed to have subject matter jurisdiction, overriding both Florida Statute 742.011, and Federal Statute U.S.C. Title 42, Section 666, (5)(E), which specifically state the Court has no jurisdiction for a paternity action when paternity has already been established "by law and otherwise" as is the undisputed facts of this action?

6. Did the Florida Supreme Court have a duty to review the appeal of this action in that the Florida Second District Court of Appeal's Opinion of October 27, 1999, indirectly invalidated both Florida and Federal paternity Statutes, subjecting one in three Florida fathers, and all other fathers of unwed Florida children, to a humiliating paternity action regardless of the efforts those fathers have taken to recognize, care, and support their children?

7. Was the Florida Judiciary's substantial interference in allowing and/or causing the destruction of the parent-child relationship, between Petitioner and minor child, through it's actions and specifically through it's use of full stays while on appeal, and through it's current refusals to address visitation, a violation of minor child's and Petitioner's Constitutional rights?

8. Does the Florida Judiciary's open policy and practice to discriminate against fathers (i.e. issuance of Standard Visitation Guidelines whereby non-custodial parent is not allowed overnight visitation with their children until they are over the age of two, combined with fathers being awarded custody less than 1-1/2 % of the time per Court Clerk records); constitute the basis for Federal intervention to prevent State sanctioned discrimination and to preserve the Constitutional rights of fathers, their children, their extended families, and the best interests of minor children?

9. Were Petitioner's Constitutional rights violated by the Florida judiciary, including the right to a fair and impartial judiciary, right of due process, right of equal protection, and liberty rights?

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## PETITION FOR WRIT OF CERTIORARI

Petitioner, Kurt Rehberg, Individually and as Next Friend on behalf of his daughter, respectfully prays that a Writ of Certiorari issue to review the Judgment and Opinion of the Florida Second District Court of Appeal entered on October 27, 1999; and to review the Judgment of the Supreme Court of Florida entered on April 18, 2000.

## OPINIONS BELOW

All opinions below are contained in the appendices to this Petition. The Judgment of the Florida Twelfth Judicial Circuit Court of August 30, 1994, is reproduced in the Appendix as App. 1. The Judgment of the Florida Twelfth Judicial Circuit Court of November 26, 1997, is reproduced in the Appendix as App. 3. The Opinion of the United States Court of Appeals, Eleventh Circuit of May 19, 1999, is reproduced in the Appendix as App. 6. The Judgment of the United States Court of Appeals, Eleventh Circuit of June 12, 1999, is reproduced in the Appendix as App. 7. The Opinion of the Florida Second District Court of Appeal of October 27, 1999, is reproduced in the Appendix as App. 8. The Judgment of the Supreme Court of Florida of April 18, 2000, is reproduced in the Appendix as App. 12.

## STATEMENT OF JURISDICTION

That the Supreme Court of the United States has jurisdiction to determine this Writ of Certiorari under United States Code, Title 28, Part IV, Section 1257; Part V, Sections 1651, 2104, and 2106; and Rule 10 of the Rules of the United States Supreme Court. That the Supreme Court of the United States has Inherent Jurisdiction to remedy the Florida Judiciary's indirect invalidation of Federal Statute, Chapter 42, Section 666. That the Supreme Court of the United States has Inherent Jurisdiction to remedy the Florida Judiciary's

violation of Petitioner's United States Constitutional rights. That the Supreme Court of the United States has Inherent Jurisdiction to remedy the Florida Judiciary's policy and practice of discrimination against fathers.

## RELEVANT CONSTITUTIONAL PROVISIONS AND STATUTES

Florida Statutes (1993), Chapter 742 (Determination of Parentage), 742.011 Determination of Paternity Proceedings: Jurisdiction. - "*Any woman who is pregnant or has a child, any man who has reason to believe that he is father of a child, or any child may bring proceedings in the circuit court, in chancery, to determine the paternity of the child when paternity has not been established by law or otherwise.*"

United States Code, Title 42, Section 666, (5) Procedures concerning paternity establishment, (E) Bar on acknowledgment ratification proceedings: "*judicial or administrative proceedings are not required or permitted to ratify an unchallenged acknowledgment of paternity*".

Constitution of the United States: Article III, Section 2; Article IV, Section 1; Article IV, Section 2; Article VI; the Fourteenth Amendment; the First Amendment; the Seventh Amendment; the Ninth Amendment as hereinafter more fully appears.

## STATEMENT OF THE CASE

This Petition for Writ Certiorari, stems from a "Petition to Establish Paternity" (Ryan v. Rehberg Fl 12th JCC #CA-94-2400), filed eight months after the birth of minor child S.R., by Respondent, Mother Kathy Ryan, now known as Kathy Cochrane. As this original paternity action has spawned related actions and appeals over the last six years, this summation will only scratch the surface. For a complete detailed

examination of events contained within the record, this Court must examine the "Statement of the Case" found in the briefs of the original paternity action and related spin off actions. Mother, Kathy Ryan's Petition, cited solely Florida Statute 742.011 as the basis for jurisdiction of a paternity action and did not contest that Kurt Rehberg was father of minor child S.R.. Petitioner, Father Kurt Rehberg filed a "Motion to Dismiss for Lack of Subject Matter Jurisdiction", which contained certified copies of minor child's Florida Birth Certificate listing Kurt Rehberg as Father, and the Official Florida Paternity Acknowledgment Agreement; which both documents had been consented to and signed by both Mother Kathy Ryan and Father Kurt Rehberg, shortly after the birth of minor child S.R.. Legal establishment of paternity "by law and otherwise" of minor child S.R. had taken place at this time with no contestment that Kurt Rehberg was Father. Florida Twelfth Judicial Circuit Court Judge Dunnigan by Order denied without legal finding, citation, or explanation, Father's "Motion to Dismiss for Lack of Subject Matter Jurisdiction" stating that hearing had been held on the issue (which it had not). The Order required Father to file a responsive pleading on or before August 8, 1994, however the Order was signed and dated by Judge Dunnigan on August 9, 1994, and Judge Dunnigan waited until August 30, 1994, to file it with the Clerk of Court and release it to the parties (see Appendix).

Under rotated Judge Donnellan, Father again challenged the Court's lack of subject matter jurisdiction. Judge Donnellan denied Father's Motion without legal finding, citation, or explanation. Judge Donnellan gave Father less than two weeks notice of trial, denied Father's request to amend pleadings, and denied Father's request for Jury Trial. Father cited specific Judgment of the Supreme Court of Florida, which specifically allowed Jury Trials for paternity actions, which Judge Donnellan ignored. Judge Donnellan held Trial during which, attorney for Mother and Judge

Donnellan stipulated that Kurt Rehberg was a good father and that the evidence was cumulative. Judge Donnellan entered a "Final Judgment of Paternity" which was not legally rendered.

Judge Donnellan was disqualified, and under successor Judge Adams, "Ryan v. Rehberg" was eventually dismissed for lack of subject matter jurisdiction (Order dated 11-26-97, see Appendix). Concurrently while Judge Adams was reviewing subject matter jurisdiction and Mother's repeated violations of Visitation Orders, Father Kurt Rehberg appealed the Final Judgment of Paternity to the Florida Second District Court of Appeal, and filed a "Petition for Writ of Prohibition" with the Supreme Court of Florida. The Florida Second District Court of Appeal dismissed the appeal before Father filed his initial brief with that Court violating it's own rules for time for filing said brief. The Florida Supreme Court denied the "Writ of Prohibition", without legal finding, citation, or explanation, and in violation of their own rules which required the Supreme Court of Florida to show cause to the lower Florida Courts.

Upon the dismissal of "Ryan v. Rehberg", Mother Kathy Ryan, now known as Kathy Cochrane, cut off all contact between Father Kurt Rehberg and minor child S.R.. Father filed related Florida Twelfth Judicial Circuit Court, Florida Statute Chapter 61 action, (Rehberg v. Cochrane, #CA-98-3235), in response to Mother's parental alienation, to preserve the minor child S.R. and his Constitutional rights to participate in each others lives. Shortly after "Ryan v. Rehberg" was dismissed for lack of subject matter jurisdiction by Judge Adams, all of Judge Adams family law matters rotated to Judge Logan. At this time, Mother sought a stay in "Ryan v. Rehberg" and a dismissal or in the alternate a stay in "Rehberg v. Cochrane", pursuant to her appeal of the dismissal of the original paternity action. Judge Logan denied Mother's "Motion to Dismiss" in "Rehberg v. Cochrane"

stating it was a viable suit, however Judge Logan fully stayed both "Ryan v. Rehberg" and "Rehberg v. Cochrane" until mandate from the Florida Second District Court of Appeal was issued in "Ryan v. Rehberg" (Mother's appeal of the dismissal of the original paternity action). As Judge Logan had full knowledge that Mother had cut all contact between minor child S.R. and Father, Judge Logan's stays in effect, improperly terminated Father's parental rights or recourse to enforce them.

Father turned to Federal damages action "Rehberg et el. v. State of Florida et el.", (United States District Court, Middle District of Florida, Tampa Division, #97-2518 Civ-T-23E), which was filed six weeks before Judge Adams dismissal of "Ryan v. Rehberg"; as his only legal means available to continue his close loving relationship with his daughter. Under this action, Father sought Injunctions and Restraining Order against the Florida Judiciary to prevent further irreparable damages occurring to the minor child S.R., paternal family, and Father. Father's Injunctions and Restraining Order were denied without finding or citation by United States District Court Judge Merryday, in violation of Federal Rules of Civil Procedure, Rule 52 (which requires a written finding for denial of an Injunction). Father appealed this denial to the United States Court of Appeals, Eleventh Circuit, which eventually issued Judgment (see Appendix), that "Section 2283 of Title 28 of the United States Code precludes district courts from enjoining state court proceedings". The United States Court of Appeal, Eleventh Circuit, had no comment on the District Court's violation of Rule 52. Thus Father's efforts to maintain his close loving relationship with his daughter through Federal intervention to protect Father's and minor child's Constitutional rights which were being abused and withheld by the Florida Judiciary, were road blocked by the Federal Court's refusal to enforce Constitutional rights. Father's Federal damage action was dismissed without prejudice for refiling, by the District Court for lack of prose-

cution; with the State of Florida's main argument that no damage had occurred due to the dismissal of "Ryan v. Rehberg"; however Father had no legal means available to continue his close relationship with his daughter, in effect the Florida Judiciary was holding the minor child S.R. as a hostage from Father during appeals and related actions.

Shortly after the dismissal of the Federal damages action, the Florida Second District Court of Appeals reversed the dismissal of "Ryan v. Rehberg" (see Appendix). Father appealed this reversal to the Florida Supreme Court, and after filing of Father's Initial Brief but before Mother prepared her Answer Brief, the Florida Supreme Court dismissed the appeal without finding, citation, or comment (see Appendix).

Shortly after the Florida Second District Court of Appeals reversed the dismissal of "Ryan v. Rehberg", Judge Logan's family law cases in the Florida Twelfth Judicial Circuit Court rotated to Judge Economou. At hearing in January of this year, Judge Economou without case record present or any prior knowledge or experience with the parties, dismissed "Rehberg v. Cochrane" and reinstated the "Final Judgment of Paternity" in "Ryan v. Rehberg" without any hearing on pending reconsideration of disqualified Judge Donnellan's Orders (including the "Final Judgment of Paternity" which had never been legally rendered). Both the dismissal of "Rehberg v. Cochrane" and the reinstatement of the "Final Judgment of Paternity" before proper reconsideration of disqualified Judge Donnellan's Orders, were appealed by Father to the Florida Second District Court of Appeal.

With the reinstatement of "Ryan v. Rehberg" (the original paternity action), Father sought to have visitation with his daughter under last standing Order of Visitation in that action. Mother however refused visitation (by word of her attorney), and Father filed "Motion for Contempt". At hearing to clarify visitation, Judge Economou ignored the stand-

ing Visitation Order of the Court, stating that Father was not allowed visitation. Judge Economou would not answer Father's requests to inform him on what specifically was required to obtain visitation, nor was there any finding or accusation of unfitness on the part of the Father. Father has never received any Order from this hearing. Furthermore, recently Judge Economou has denied without comment, Father's "Motion to Show Cause" as to why visitation between Father and minor child S.R. should not take place. Father has presented evidence by motion to both Judge Logan and Judge Economou that Mother Kathy Cochrane and minor child S.R. no longer reside in the jurisdiction of the Florida Twelfth Judicial Circuit Court, as of December, 1998, with whereabouts unknown to all, but attorney for Mother. Both Judge Logan and Judge Economou have not required attorney for Mother to reveal the whereabouts of Mother and minor child S.R., even after Father presented copy of Federal Law requiring the Court to obtain location of a minor child in an active custody action. Regardless of whether the Court shares the location information of the minor child with Father, the Court has a concrete duty to obtain that location during an active custody action. It is the Father's firm belief that Judge Logan and Judge Economou of the Florida Twelfth Judicial Circuit Court without any accusation or finding of unfitness on behalf of the Father, have through their improper actions, with malice, prevented minor child S.R. and Father from participating in each others lives, perhaps in retaliation for Father's work with the Florida Legislature in banning the Florida Twelfth Judicial Circuit Court's "Standard Visitation Guidelines" as a form of the "Tender Years Doctrine" (a discriminatory practice that was outlawed by the Florida Legislature almost two decades ago), and for Father's other efforts in legislative reform of Florida family law. Despite this legislative ban on the use of the Florida Twelfth Judicial Circuit Court's "Standard Visitation Guidelines", the Florida Twelfth Judicial Circuit Court continues to use them if there is not a specific objection from one of the parties to an action,

thereby still openly practicing the "Tender Years Doctrine". Father has last seen and spoken with his daughter the minor child S.R. in November, 1997.

## ARGUMENT

1. THAT THE APPELLATE COURT OPINION OF OCTOBER 27, 1999, HAS INVALIDATED FLORIDA STATUTE 742.011.

The Appellate Court's Final Order completely avoids the issue of the clear wording of Florida Statute 742.011, which expressly forbids the Court from obtaining jurisdiction, given the undisputed facts that the paternity of the minor child was legally established at birth with both Florida Birth Certificate and State of Florida Paternity Acknowledgment Agreement, executed by mother and father. With the specific wording in Statute 742.011 that jurisdiction may only be obtained "when paternity has not been established by law or otherwise", and given that Statute 742.011 is clearly titled "Jurisdiction", the Court under this Statute has no power to proceed with a Chapter 742 paternity action given that paternity in this instance, had been established by law and otherwise, prior to mother's filing of the paternity suit. The Appellate Court eludes but does not specifically state in it's Opinion that because the Court does have subject matter jurisdiction over the class of cases pertaining to child support, custody, and visitation; the Court therefore has jurisdiction over this paternity action. To paraphrase, " we handle something similar under Chapter 61 actions, therefore we have jurisdiction over a Chapter 742 paternity action, regardless that the conditions set forth in Statute 742.011 for obtaining jurisdiction have not been met". The purpose of the Chapter 742, Establishment of Paternity Statutes, and particularly Statute 742.011 is to tell the judiciary under what set of circumstances the Court derives it's Constitutional / Statutory powers to proceed with

a paternity action. If the circumstances set forth by Statute are not exactly met, the Court has no power to proceed, regardless of the actions of the parties prior to or after filing of the suit. The Appellate Court Opinion thus has invalidated Statute 742.011 as meaningless under the logic of the Opinion, and action of the Court. "A statute is to be construed so that it is meaningful in all its parts" *Lusker v. Guardianship of Lusker* 434 So.2d 951 (Fl 2nd DCA 1983) and *State v. Rodriquez* 365 So.2d 157 (Fl. 1978). If the Appellate Court Opinion stands, Statute 742.011 is meaningless and invalid, as under any circumstance, a father will be subject to a humiliating paternity suit regardless of the actions he has taken to legitimate, legally establish paternity, support, or care for his child born out of wedlock. Such action by the Court shows open discrimination against fathers.

2. THAT THE APPELLATE COURT OPINION OF OCTOBER 27, 1999 HAS INVALIDATED FEDERAL STATUTE CHAPTER 42, SECTION 666.

As above in argument #1, this Federal Statute specifically bars the Court from proceeding with a paternity action in a legally established uncontested paternity. Again as in argument #1, the Appellate Court Opinion of October 27, 1999 has rendered this Federal Statute invalid and meaningless by it's nature, given the Opinion will allow the commencement of a paternity action no mater what the circumstances. Please note that the Florida Chapter 742, Establishment of Paternity Statute now also incorporates mirrored wording of this Federal Statute, thus the Appellate Opinion has invalidated both prior and current Florida Paternity Statutes, as well as this Federal Statute.

3. THAT THE APPELLATE COURT OPINION OF OCTOBER 27, 1999, HAS INVALIDATED LEGISLATED POLICY AND VARIOUS STATUTES

CONCERNING FATHERS REGISTERING ON BIRTH CERTIFICATES AND THE EXECUTION OF THE STATE OF FLORIDA PATERNITY ACKNOWLEDGMENT AGREEMENT.

As above in argument #1, with the Appellate Court Opinion in effect, any unwed Florida father, or any out of State father of an unwed Florida birth can be subject to a humiliating paternity action regardless of the actions he has taken to support and care for his child. Thus the Appellate Court Final Order invalidates and makes meaningless all Statutes connected to the legal establishment of paternity outside of a paternity action. In the real world, application of the Florida Second District Court of Appeal Opinion of October 27, 1999, means that the fathers of one third of the children born in Florida each year, are subject to a paternity suit regardless of their actions. This in itself is a form of discriminatory State sponsored public humiliation of all unwed fathers, and violates their equal protection rights, as married or divorced fathers will not be subject to such public humiliation or have the prospect of being involved in a civil suit hanging over their heads just by being fathers.

4. THAT A PATERNITY ACTION CARRIES A CONCRETE SOCIAL STIGMA FOR THE FATHER.

That Father Kurt Rehberg was needlessly publicly humiliated by this paternity action and has suffered irreparable damages. Father was listed in local newspaper as party to a paternity action, and although this action of the newspaper was clearly illegal under Florida Statutes, the damage had been done. Father had to explain to casual acquaintances that he had indeed recognized and supported his child, that it was in fact the Mother's specific choice to have child out of wedlock, and end relationship with father. There is a concrete social stigma to a paternity action that the father involved has abandoned or failed to recognize their

child. As the complete opposite is true with Father Kurt Rehberg, he has had to suffer through State sponsored public humiliation and discrimination. Under a paternity action in Florida, fathers are required to pay both parties legal fees and all Court costs, regardless of whether father or mother files the action, and regardless of whether father or mother wins the action. All other Florida civil actions base legal fees and Court costs on a parties ability to pay and which party wins. As such this is an unconstitutional discriminatory practice in open violation of the equal protection clause of the Constitution, as it treats fathers involved in a paternity action as a separate class of citizens with unequal treatment under the law. As Mother in this action has commented that her attorney stated to her "that this action would not cost her a dime", It is easy to conclude that the motive of attorney for Mother, motive for filing a paternity action instead of filing a proper Florida Statutes, Chapter 61, action concerning custody, child support, and visitation, was the improper collection of extra fees.

5. THAT THE APPELLATE COURT ERRED IN STATING THAT "THE LAW DID NOT CLEARLY SET FORTH THE MECHANISM BY WHICH A MOTHER COULD OBTAIN RELIEF INCIDENTAL TO UNDISPUTED PATERNITY".

The law did clearly set forth relief available to unwed mothers, unwed fathers, and children of unwed parents with an established paternity; over the issues of custody, child support, and visitation; under the Florida Chapter 61 Statutes specifically dealing with those issues. As stated above, attorney for mother filed a paternity suit instead of seeking relief under the appropriate Chapter 61 Statutes, to take advantage of different attorney fees for each type of action. As mother has commented that her attorney Melton Little stated "that she would not have to pay a dime for the suit", there is no confusion that attorney Little filed a paternity suit

for the improper collection of fees.

6. THAT THE OPINION OF THE APPELLATE COURT FAILS TO STATE THE PROPER WAY FOR UNWED PARENTS TO OBTAIN RELIEF CONCERNING THEIR CHILDREN.

If indeed there is confusion as to obtaining relief as the Appellate Opinion of October 27, 1999, states; the Appellate Opinion fails to outline or clarify the proper type of suit or under which Statute to obtain that relief. Thus until a resolution of this issue, what has happened in this action can happen to thousands of others. If the Court points out a problem, it has a duty to solve or clarify that problem so that the problem does not continually reoccur and harm others.

7. THAT THE APPELLATE COURT ERRED IN ITS APPLICATION OF "CLASS OF CASES" CONCERNING SUBJECT MATTER JURISDICTION.

The Appellate Court's Opinion of October 27, 1999, references *Beach Park Development Corp. v. Remhof* 673 So.2d 912 (Fl 2nd DCA 1996) as its authority to invoke subject matter jurisdiction over the class of cases pertaining to child support, custody, and visitation. Beach Park is a suit concerning breach of oral contract regarding moneys alleged to be loaned, and traces it's controversies over subject matter jurisdiction back to *Lusker v. Guardianship of Lusker* 434 So.2d 951 (Fl. 2nd DCA 1983) and *Smith v. Bettinghaus* 178 So.2d 201 (Fl. 2nd DCA 1965); which in turn trace their origins concerning subject matter jurisdiction back through cases to two key precedents: *Lovett et al v. Lovett* et al 112 So. 768 (Fl. Sup. Ct 1927) and *Malone v. Meres* 109 So. 677 (Fl. Sup. Ct 1926); both cases are included in Appendix. *Lovett* and *Malone* define the acquiring of subject matter jurisdiction as power conferred upon the Court by Constitution, Statute, or both. *Lovett* specifically details the

confusion in the use of the term subject matter jurisdiction as it is applied in an incorrectly broad sense, meaning the power of the Court to hear a matter before it. The Appellate Court's Final Order falls into this wrongful broad definition found outlined in *Lovett*. After the Court has the general powers to hear an action (subject matter jurisdiction to hear the matter), further invocation of the Court's Constitutional / Statutory powers to proceed from that point come only with strict compliance with the law / statues, concerning the Res or specific thing in question (subject matter jurisdiction over the Res), in a paternity action the Res is paternity, in a Chapter 61 custody proceeding the Res is custody. The Appellate Court erred by defining subject matter jurisdiction in the broad sense as the general power of the Court to hear matters concerning the welfare of children, i.e. custody / child support; and did not trace the legal principle far enough back, or understand the actual multiple processes of each step of the Court acquiring jurisdiction / power, in order to move to the next step in acquiring jurisdiction / power , in order to eventually render judgment. The flawed reasoning of the Appellate Court that because it decides similar issues under different Statutes, or because it has general jurisdiction to hear matters of Family Law, then the particular Statutes that apply to the Res can by overlooked, is in fact, an exercise in abuse of power by the Court, and something the Supreme Court of Florida warned us about back in 1926. Petitioner has outlined these sequential steps in acquiring the Constitutional / Statutory powers of the Court over the Res to proceed in many of his filings contained within the record.

8. THAT A PATERNITY ACTION IS A SEPARATE CLASS OF CASE.

Paternity actions are a separate class of case from all other family law and for that matter, all other civil suits. The paternity action is the only family law action where a litigant is allowed a jury trial, as verified by the Florida Supreme

Court. Paternity actions have a separate though unconstitutional, assignment of both parties attorney fees / costs; to fathers, regardless of who files, who wins, or the parties ability to pay. This structure is unique from all other civil law in Florida where the standard is either parties ability to pay, or prevailing party. Additionally a paternity action carries a concrete social stigma and humiliation for fathers, to link a paternity action to other civil family law by the nature of supplemental determination of custody / child support / visitation, as the Appellate Court's Final Order does, overlooks the strange duck that a paternity action truly is. The paternity action is reserved for obtaining relief solely when unwed parents have failed to establish paternity by all other legal means, and for the true establishment of paternity in the case of mothers committing parentage fraud (although the strong presumption of legitimacy may even prevent a paternity action in those instances). For the above reasons, a paternity action is in it's own separate class of case, and that's why the Florida Legislature gave paternity actions their own separate Chapter of Statutes (Chapter 742), and it's own separate jurisdiction (Statute 742.011). A paternity action clearly stands out as a separate class of case from all other civil litigation. Of note with the issue of jury trial for paternity actions; contained within the record, father properly requested a jury trial before trial in this action. Florida Twelfth Judicial Circuit Court Judge Nancy Donnellan denied father's request. Father showed Judge Donnellan the Florida Supreme Court's ruling allowing jury trials for paternity actions and Judge Donnellan ignored this ruling. The Florida judiciary has failed to deal with or even acknowledge this issue and open violation of father's Constitutional due process rights to a jury trial.

9. THE FLORIDA JUDICIARY NEVER ACQUIRED SUBJECT MATTER JURISDICTION IN "RYAN V. REHBERG".

A. Under the United States Constitution and the Florida Constitution, each branch of government has limited powers, this is called the separation of powers and is a fundamental cornerstone to a Democracy. The Florida judiciary has specific limited powers which can only be invoked under specific conditions. These judicial powers possessed by a Court are classified either as Inherent powers, stemming from its existence as a Court, or Constitutional / Statutory powers, see *Miami v Romfh* 66 Fla 280, 63 So 440 (1913), and *Sumner Lbr. Co. v. Mills* 64 Fla 513, 60 So 757 (1913)) SR.X.1603-1735. The typical events of a civil lawsuit and the invocation of the Court's powers are as follows: 1. A Petition is filed by the Plaintiff, giving rise to the Court's Inherent powers. 2. The Court uses it's Inherent powers to determine if the Court has subject matter jurisdiction, to invoke it's Constitutional / Statutory powers. 3. If the Court has subject matter jurisdiction, the Court then uses it's Inherent powers to determine if the Court has personal jurisdiction over the Defendant(s), to invoke it's Constitutional / Statutory powers. 4. If the Court has both subject matter jurisdiction and personal jurisdiction, then the Court's Constitutional / Statutory powers are invoked and the case proceeds. A judgment is eventually rendered with fees and costs applied per prevailing Statutes and law. 5. If the case lacks subject matter jurisdiction or personal jurisdiction, the Court using it's Inherent powers, dismisses the case. Fees and costs in favor of the Defendant(s) are then determined not by a particular Statute or division of law that the Plaintiff was suing under, but under the Court's Inherent doctrines of justice and fairness. The FLA JUR 2d, vol.#13, COURTS AND JUDGES pgs. 105-109 specifically lists and defines the powers of Court, this is included in the record, contained within Notice of Filing Memorandum to Judge Logan 1/21/98 with attachments along with cited cases on powers of the Court. Inherent powers of the Court include: control of the Court's process and procedure; control of the conduct of its officers and the preservation of order and decorum with

reference to its proceedings; the power to prevent abuse of Court procedure; the power to promulgate and enforce rules concerning the conduct of attorney; the power to vacate its own Orders / Judgments / Decrees; the power to afford redress or repair injury when they have by their own erroneous act occasioned a wrong or wrongfully adjudicated; and the power to Order a Plaintiff to make restitution to the Defendant(s) so as to obviate the advantage obtained by the Plaintiff through a rendition of the Court's erroneous judgment, even after execution has been levied, see *State ex. rel. Sheiner v. Giblin* 73 So 2d 851 (1954), *Masser v. London Operating Co.* 106 Fla 474, 145 So 72,79 (1932), *Hazen v. Smith* 101 Fla 767, 135 So 813 (1931), *Durham v. Ellis* 157 So 2d 185 (Fl 2nd Dist. 1963). How the above applies to this case is that when the Petition to Establish Paternity was filed, the Inherent powers of the Court were invoked. Judge Dunnigan improperly invoked the Constitutional / Statutory powers of the Court when she denied Father's Motion to Dismiss for Lack of Subject Matter Jurisdiction and Verified Motion to Strike as Sham. Judge Dunnigan continued on in clear absence of subject matter jurisdiction. Rotated Judge Donnellan was quickly given the opportunity to rule on Father's Motion to Dismiss for Lack of Subject Matter Jurisdiction, which she denied, which again improperly invoked the Constitutional / Statutory powers of the Court. Judge Donnellan continued on in clear absence of subject matter jurisdiction. Successor Judge Adams was quickly given the opportunity to rule on Father's Motion to Dismiss for Lack of Subject Matter Jurisdiction. Judge Adams could rule on this issue as subject matter jurisdiction can be raised by Defendants at any time or multiple times, additionally as Successor Judge to the Disqualified Judge Donnellan, Judge Adams had the power to review and relitigate all issues before Judge Donnellan. Judge Adams while taking a great deal of time to decide the issue of subject matter jurisdiction, eventually dismissed the action, leaving resolution of pending issues (sanctions over attorney misconduct, and

determination of fees and costs) to Rotated Judge Logan. Even though the action was dismissed, Judge Logan could resolve the remaining issues under the Court's Inherent powers. Judge Logan instead decided to stay all issues until mandate was received from a higher Court.

B. The Petition to Establish Paternity cited only Florida Statute 742.011 as the sole basis of subject matter jurisdiction, specifically stating "1. This is an action to establish paternity pursuant to Florida Statute 742.011." R.I.1-3. The 1994, Florida Statute 742.011 reads in its entirety

> "*742.011 Determination of paternity proceedings; jurisdiction - Any woman who is pregnant or has a child, any man who has reason to believe that he is the father of a child, or any child may bring proceedings in the circuit court, in chancery, to determine the paternity of the child when paternity has not been established by law or otherwise.*"

The plain and clear wording of Florida Statute 742.011, states that subject matter jurisdiction can only be obtained for the invocation of the Constitutional / Statutory powers of the Court, "when paternity has not been established by law or otherwise".

C. "Subject matter jurisdiction is conferred by Constitution or Statute, and cannot be given by waiver, acquiescence, or parties agreement", see *Florida HRS v. Scheiber* 561 So 2d 1236 (Fl 4th DCA 1990), and also *Florida Export Tobacco v. Dept. of Revenue* 510 So 2d 936 (Fl 1st DCA 1987). "Pleading must show grounds for jurisdiction in the Court, subject matter jurisdiction is conferred on Court by Constitution or proper Statute, and cannot be conferred by parties, by acquiescence, or agreement", see *F.P.L. v. Canal Authority* 423 So 2d 421 (Fl 5th DCA 1982). What the above means in this case is that as

Mother's petition listed only Florida Statute 742.011 as the sole basis for jurisdiction, the Court using its Inherent powers must examine Statute 742.011 as it's only source for subject matter jurisdiction and invocation of it's Constitutional / Statutory powers. What the above also tells the Court is that the actions of the parties are irrelevant, only the Statute cited in the pleading (Petition) or a specific Constitutional clause, can be the basis for subject matter jurisdiction and thus the invocation of the Court's Constitutional / Statutory powers.

D. Legal paternity of the minor child was established at birth. Father was listed on minor child's Birth Certificate by consent of Father and Mother. Father and Mother both signed and executed the official State of Florida Paternity Acknowledgment Agreement. Father established paternity of the minor child at birth "by otherwise" through his statements and deeds prior to minor child's birth. This legal paternity has never been rebutted by the parties.

E. "Words of common usage when employed in a Statute should be construed in their plain and ordinary sense"; "Legislature is assumed to have expressed its intent through words found in Statute"; "If language of Statute is clear and unambiguous, legislative intent must be derived from words used without involving rules of construction or speculating as to what the Legislature intended", see *Zuckerman v. Alter* 615 So 2d 661 (Fl S.Ct. 1993). What the above means in this case is that the Court has no authority to change or reconstruct the clear and unambiguous language of Statute 742.011 "when paternity has not been established by law or otherwise". For the Court to change or reconstruct this language would be a Constitutional separation of powers violation.

F. A child cannot have two legal paternity's at any given time. As the minor child's legal paternity was clearly established at birth; for Mother to bring forth a paternity action, she would have to rebut this first paternity in order to

establish a second paternity. Since Mother has never rebutted the first paternity with claims that another is father to the minor child, Mother cannot be permitted to go forward with the paternity action, as that would be a violation of minor child's Constitutional rights to her legally established paternity. In some instances a minor child's Constitutional right to the presumption of legitimacy overweighs a parties right to go forward with a paternity action over a legally established paternity, when another individual is named as father to a child. The minor child's Constitutional right to be free from State interference of it's legal paternity has been violated.

G. The purpose and usage of the "rebuttable presumption" clause in the Chapter 742 paternity Statute, is to allow the rebuttal of a legally established paternity in cases of fraud or mistake, so a second legal paternity can be established between child and true biological father. When a child is born to an intact family with the husband not the true biological father, the Courts may not be allowed to proceed with a paternity action as the presumption of legitimacy for the child outweighs all. The true key to the rebuttable presumption clause in the Chapter 742 paternity Statute, is that paternity has to first be rebutted in order to activate the rebuttable presumption clause. Since in this case, this is an uncontested legal paternity, and Mother has never rebutted paternity; the rebuttable presumption clause has never been activated. Sections 90.303 and 90.304 of the Florida Evidence Code define the two types of rebuttable presumptions present in Florida civil actions. Basically, presumptions under 90.303 are policy related; presumptions under 90.304 (the type defined in the rebuttable presumption clause of the Chapter 742 paternity Statute) are statutory and place a great burden on the party asserting the nonexistence of the presumed fact. This evidence must be proved before the rebuttable presumption becomes operable (in the case of a Chapter 742 paternity action, that another man is the

biological father to the child). When a party relies upon a rebuttable presumption, the Court must determine if that party has presented sufficient evidence of the nonexistence of the presumed fact in Order to activate the rebuttable presumption clause and move forward with the action. Thus the rebuttable presumption clause serves only as a vehicle to establish a prima facia case to allow a party to rebut an already established legal paternity in the case of fraud or mistake when the established paternity is not with the true biological father of the child. Additionally if the Florida Legislature had intended as a matter of policy to allow anybody to proceed with a Chapter 742 paternity action by claiming the rebuttable presumption clause, without actually rebutting the legally established paternity; the Legislature would have simply not included the "when paternity has not been established by law or otherwise" language under jurisdiction for the Chapter 742 paternity Statute. Any reconstruction of the rebuttable presumption clause by the Court is forbidden under Constitutional separation of powers, and would null and void all existing State of Florida Paternity Acknowledgment Agreements, subjecting one in three children born in the State of Florida to needless litigation.

H. Florida Statutes, Chapter 61, was and still is available to both parties to seek Court formalization of custody, child support, and visitation. As these are Florida's specific Statutes for custody, child support, and visitation; and are named as such, Mother should have filed action pursuant to Florida Statutes Chapter 61, or if Mother's attorney Little was in doubt, filed action pursuant to both Chapter 61 and Chapter 742. Original Florida Twelfth Judicial Circuit Court Judge in this action should have granted Father's motion to dismiss with prejudice and directed Mother and Father to pursue a Florida Statutes, Chapter 61 action. As such both minor child and Father's Constitution due process rights have been violated.

I. That attorney for Mother, Melton Little, never amended the Florida Statutes Chapter 742 paternity action to a Chapter 61 action when subject matter jurisdiction was in question by Father and the Court, nor did Little refile a separate Chapter 61 action, as either of those actions would constitute material evidence of his malpractice and leave Little open to a damages and malpractice suit from Mother. For Mother's attorney (Little's partner John Gillies), to raise the defense for the first time under appeal, that Little was unable to seek relief for Mother under Chapter 61, or that Mother is being unfairly burdened, is absurd. Little refuses to take responsibility for his actions of leveling an illegal nuisance suit against Father (by suing Father for what Mother already possessed or was in control of), for the sole reason of generating improper billings for Little's enrichment; and as such, Little has harmed all associated with this action, including his client, Mother Kathy Cochrane, by his malpractice and intentional unethical actions.

J. That Federal Statute Chapter 42, Section 666, specifically prevented the Court from acquiring subject matter jurisdiction and the invocation of the Court's Constitutional / Statutory powers, as this Federal Statute states "*judicial or administrative proceedings are not required or permitted to ratify an unchallenged acknowledgment of paternity*".

K. That Florida Statutes Chapter 742, was amended in 1997 by the Florida Legislature with redundant wording mirroring Federal Statute Chapter 42, Section 666; which prevents the Court from obtaining subject matter jurisdiction in a Chapter 742 action over an unrebutted legal paternity. Attorney for Mother suggests in their Initial Brief of their appeal of dismissal of "Ryan v. Rehberg", that the Florida Legislature did this to clear some "ambiguity" surrounding Chapter 742. As Father has been active with the Florida Legislature since 1994, Father is aware of the actual reasons

for the amendment. Tied to the amendment of Chapter 742 and many other Statutes was a one hundred million dollar Federal appropriations package. If the Florida Legislature did not amend Statutes to include this language, Florida would not receive the one hundred million dollars. These changes were passed by the Legislature in the last days of the session with absolutely no debate or open discussions. Many Florida Congressmen were against the entire package of amendments and said so privately, however nobody was willing to give up one hundred million dollars of Federal moneys.

L. That "Judgment rendered in action in which court lacks subject matter jurisdiction is void" *Standard Guar. Ins. Co. v. Cunningham* 610 So2d 458 (Fl 1st DCA 1992), *Gay v. McCaughan* 105 So2d 771 (Fl 1958). What the above means to this action is that every single Order and Judgment made while the Court was proceeding in clear absence of subject matter jurisdiction is void, thus there can never be a reconstitution of any of those Orders or Judgments by the Appellate Court.

M. Rebuttal of Mother's argument that disastrous consequences will occur if Court follows the law regarding the proper obtainance of subject matter jurisdiction. Mothers who have prior paternity rulings reopened on the basis that the Court proceeded without subject matter jurisdiction and therefore are void, can seek relief at the same time under Chapter 61 counter suit, or separate Chapter 61 action. As a Chapter 61 action would allow mother to collect retroactive child support based on today's child support guidelines and today's inflated money; Mother would be money ahead if Father challenged prior paternity ruling. What attorney for Mother didn't bring up was the disastrous consequences that have already occurred by the Florida Judiciary's disregard of the law, and failure to follow the mandates of the Florida Legislature. In the early 1980's, the Florida Legislature specifically banned the Florida Judiciary's practice of the

"Tender Years Doctrine". Here we are nearly twenty years later and the Florida Judiciary still continues an open and blatant policy and practice of discrimination against fathers, including exercise of the "Tender Years Doctrine". In the Twelfth Judicial Circuit Court from which this action originates, per data furnished by the Clerk of Court, custody of children is awarded to fathers, less than 1 ½ % of the time. Florida's child support compliance rate is a dismal 23% compared to States which enforce the presumption of joint custody which have a 90% compliance rate. Florida is ranked 47th in the nation concerning children's issues. Almost one out of two Florida children never graduates high school. As per U.S. Census data and numerous studies, higher child support compliance, higher high school graduation rates, lower juvenile crime rates, and lower teen pregnancy rates; have all been conclusively linked to a presumption of joint custody, and a policy and practice of a Judiciary, that the "best parent is both parents". Florida like other States whose Judiciary's refuse to follow a presumption of joint custody, has been plagued by custody related kidnappings and killings. A recent example being the Sheila Belush killing in Sarasota, Florida, where nobody is talking about the Florida Twelfth Judicial Circuit Court's role in causing the conflict that lead to her death. Nationally we have events such as the two young boys opening gunfire on an elementary school playground, killing both students and teachers. When first interviewed by the media, one of the boys was asked "why did you do it", his reply was that he missed his father. Such events should serve as a wake up call to institute the policy and practice of the "presumption of joint custody", and the policy and practice of "the best parent is both parents". Fathers who wish to participate fully in their children's lives are deterred by endless legal obstacles and years of litigation, with this action being a perfect example. Attorneys who represent fathers specifically inform fathers to not bother seeking custody as the Court's discrimination is so blatant. This Court must look at the disastrous consequences that

have already occurring by the Florida judiciary's refusals to comply with the law, and it's open and blatant policy and practice of discrimination against fathers.

N. Rebuttal of Appellant's argument that Circuit Court had subject matter jurisdiction based on counterclaim. Counterclaim filed by attorney for Father was by ineffective counsel with divided loyalties. Father gave his attorney explicit written instructions to contest subject matter jurisdiction which attorney ignored. "The courts are reluctant to attribute to clients mistakes made by their attorneys" *Whitaker v. Associated Credit Services* 946 Fed. 2d 1222 (6th Cir. 1991). "Waiver by counsel is not ipso facto sufficient to establish that client has made knowing and intelligent waiver of right" *U.S. v. Proa-Tovar* 945 Fed. 2d 1450 (9th Cir. 1996). "Ineffective assistance claim can be based on attorney's conflict of interest" *Mathis v. Hood* 937 Fed. 2d 790 (2nd Cir. 1991). As explained in prior filings and briefs contained in the record; attorney for Father was working for and actively campaigning for wife of opposing counsel without any disclosure to Father of this conflict of interest. Later Judge Donnellan refused to allow Father to amend pleadings to correct this issue, opposing counsel Little testified under oath confirming Judge Donnellan's refusal to allow amending of the pleadings. Father's only option available was to file objections and specifically a Blanket Objection. Father has actively contested subject matter jurisdiction before and after issuance of counterclaim. Counterclaim was compulsory in nature, as items not plead at time of answer would have been waived, as per Rule 1.170(a) of the Florida Rules of Civil Procedure, see *Babcock v. Whatmore* 707 So 2d 702 (Fl. S.Ct. 1998). Regardless of Father's actions and Mother's claim; as detailed above, subject matter jurisdiction is conferred by Constitution or Statute, and cannot be given by waiver, acquiescence, or parties agreement. The specific language of Florida Statute 742.011 is the sole determinate of whether the Court has

subject matter jurisdiction.

10. THAT THE FINAL ORDER OF THE APPELLATE COURT VIOLATES THE SEPARATION OF POWERS.

For the Judiciary to proceed when both Federal and Florida Statutes clearly prevent it from doing so, is a violation of separation of powers. The Court cannot act as the Legislative branch of government and thus justify its illegal proceeding without power in this action. The Court has the power to declare a Statute unconstitutional, which it has not done in this action concerning the applicable Florida and Federal paternity Statutes. The Court does not have the power to rewrite a Statute, as it has attempted to do in this action; that power is reserved solely in the Legislative branch of government. As such the minor child's and Father's Constitutional rights of due process have been violated.

11. THAT THE APPELLATE COURT ERRED IN ISSUING IT'S MANDATE AS THE "MOTION FOR RECONSIDERATION OF DISQUALIFIED JUDGE'S ORDERS" BEFORE THE CIRCUIT COURT, PREVENTED THE RENDERING OF THE DISQUALIFIED JUDGE'S FINAL JUDGMENT OF PATERNITY.

Florida Rules of Civil Procedure and case precedent prevent the rendering of disqualified Judge Nancy Donnellan's Final Order, as there was a current "Motion For Reconsideration Of Disqualified Judge's Orders" (see record) before the Circuit Court, which has already been determined to be a valid Motion by Successor Judge.

12. THAT THE FLORIDA APPELLATE AND SUPREME COURT WERE UNFAIR AND PARTIAL CONCERNING THE PARTIES AND

ISSUES.

A. That Petitioner's filed a Federal damages and negligence suit against the State of Florida, and the specific Judges of the Florida Second District Court of Appeal, and the specific Justice of the Florida Supreme Court (Rehberg et al v. State of Florida et al #97-2518 Civ-T-23E). That this suit was filed on October 10, 1997; prior to the Order in Ryan v. Rehberg dismissing that action due to lack of subject matter jurisdiction. This suit presented the above stated Judges / Justices, with a blatant conflict of interest, to hear this action (oral arguments were held with the Florida second District Court of Appeal while this Federal action was active , over Father's objections that the matter and issues were being held before an unfair and partial Court due to this conflict of interest, as were Father's request to transfer the issues to a fair and impartial Federal Court were ignored). No Judge may decide any issue in which his or her personal assets are at stake. The United States Constitution, Article III, specifically states that "*the Judiciary's Constitutional function is the impartial, independent, and final adjudication of disputes within the jurisdiction of the Courts*" see *Plaut v. Spendthrift Farm Inc.*, 115 S.Ct. 1447,1452 (1995). The law is well established that a fundamental tenet of due process is a fair and impartial tribunal. See *Marshal v. Jerrico Inc.*, 446 US 238, 100 S.Ct. 1610, 64 L.Ed.2d 182 (1980), there the United States Supreme Court said "*The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases*".

B. The Appellate Court has had prior opportunities and has refused to address the issue of subject matter jurisdiction and the Constitutional rights of minor child and Father. On December 21, 1995, Father's Motion to Review Denial of Stay and Temporary Injunction, along with roughly five hundred pages of documents from Ryan v. Rehberg CA-94-2700, were filed by Father by hand delivery to the

clerk of Court at approximately 4:00 P.M. the Friday before the Appellate's Court Christmas holiday; in Rehberg v. Cochrane, Florida Second District Court of Appeal case number 95-04526 (the first appeal of the original paternity action). The Appellate Court on the first day back from Christmas vacation, December 26, 1995, denied the Motion / Injunction; supposedly a committee of Judges each read the Motion / Injunction and supporting five hundred pages of documentation, met for a committee vote, sent the result (denial) to the clerk, where the clerk typed up and mailed the Order. All this supposedly occurred in one days time. Contained within the Motion / Injunction (paragraph 4) and in the supporting documentation, was the issue of subject matter jurisdiction for this Court to decide on. Other Constitutional issues of the Father and minor child were present in the Motion / Injunction for this Court's immediate attention and ruling including many substantial due process violations, and parental liberty rights violations. On January 2, 1996, Father filed a Motion for Rehearing, a Motion for Rehearing En Banc, and a Motion for Clarification with this Court, thus giving the Appellate Court it's second opportunity to examine and rule on the issue of subject matter jurisdiction and the Constitutional rights of Father and minor child. The Court denied those Motions on January 12, 1996 without explanation. On February 9, 1996, Father filed with the Appellate Court a Motion for Extension of Time, which specifically brought up the issue of subject matter jurisdiction, giving the Court it's third opportunity to address this issue. On March 25, 1996, Father filed with the Appellate Court a Motion for Extension of Time, which specifically brought up the issue of subject matter jurisdiction, giving the Court it's fourth opportunity to address this issue. Contained with this Motion, Father included a police report and exhibits concerning perjury the Mother had committed regarding a head injury to the minor child under her care. These exhibits were included to show the Court the immediate need for the Court to address the

issues before it. This Court instead of doing its mandated duty to address the issues, struck the exhibits and ignored the issues. On April 3, 1996, Father filed with the Appellate Court a Motion for Rehearing and Objection to Order, giving the Court it's fifth opportunity to address the issue of subject matter jurisdiction and the Constitutional rights of Father and minor child. On May 8, 1996, the Court dismissed the appeal (Rehberg v. Cochrane 05-04526) in direct violation of the Florida Rules of Appellate Procedure, Rule 9.420. On May 17, 1996, Father filed with the Appellate Court a Motion for Rehearing, specifically citing the issue of subject matter jurisdiction, giving the Court it's sixth opportunity to address the issue of subject matter jurisdiction. On June 18, 1996, the Court denied Father's Motion for rehearing. Given the Appellate Court's six prior opportunities and failures to address the issue of subject matter jurisdiction and the Constitutional rights of minor child and Father; given the Court's failures to cite one law, or one Constitutional clause, and failures to ever answer any of Father's Motions for Clarification; given this Court's failures to follow it's own Rules of Appellate Procedure and mandated duties; and given the fact that the Court allowed the action of Ryan v. Rehberg to continue in clear absence of subject matter jurisdiction, causing irreparable harm to the minor child, paternal family, and Father; Father has a genuine fear that the Florida judiciary and it's Judges / Justices, have been and continue to be unfair and partial.

13. PETITIONER'S UNITED STATES CONSTITUTIONAL FOURTEENTH AMENDMENT RIGHTS WERE VIOLATED BY THE FLORIDA JUDICIARY.

The Petitioner's Constitutional Fourteenth Amendments rights including equal protection, due process, and liberty rights were violated by the Florida Judiciary. Father has a fundamental Constitutional right to the care, custody, and

control of his offspring free from undue State interference, see *Troxel v. Granville*, #99-138, 137 Wash. 2d 1, 969 P.2d 21, affirmed. Father has fundamental Constitutional right to due process, and equal protection. Minor child has fundamental Constitutional right to jointly, equally participate in the lives and extended families of it's natural parents, free from undue State interference.

## 14. THE INCORPORATION OF ALL PRIOR ARGUMENTS

The Petitioner's hereby incorporate into this petition, all prior filings and arguments raised in all actions stemming from and including original Florida Twelfth Judicial Circuit Court action: Ryan v. Rehberg case number CA-94-2700, as hereinafter more fully appears.

**IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT IN AND FOR MANATEE COUNTY, FLORIDA, FAMILY LAW DIVISION**

**KATHY RYAN**

**VS.** **CASE NO.: CA-94-2700**

**KURT REHBERG**

**ORDER ON DEFENDANT FATHER'S MOTION TO PROTECT FROM DISCOVERY AND MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION**

(Filed August 30, 1994)

This matter having come before the Court to be heard on July 27, 1994, upon the Father's Motion To Dismiss For Lack Of Subject Matter Jurisdiction and the Defendant Father's Motion To Protect From Discovery and the Court having heard argument and being fully advised in the premises, it is hereby **ORDERED and ADJUDGED:**

1. The Defendant Father's Motion To Dismiss For Lack of Subject Matter Jurisdiction is denied.

2. The Defendant Father shall file a responsive pleading on or before August 8, 1994.

3. the Defendant's Motion To Protect From Discovery is moot, as Plaintiff Mother's attorney has agreed to reschedule the deposition.

DONE and ORDERED this 9 day of August, 1994, in Chambers, at the Manatee County Courthouse, Bradenton, Florida.

/s/ Janette C. Dunnigan , CIRCUIT JUDGE

Copies furnished to: Melton H. Little, Esquire
Kurt Rehberg

/s/ CB Filed for the Record, R. B. Shore, Clerk Circuit Court, Manatee Co. Florida, August 30, 4:30 PM '94

**IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT IN AND FOR MANATEE COUNTY, FLORIDA, FAMILY LAW DIVISION**

**KATHY RYAN**

**VS.** **CASE NO.: CA-94-2700**

**KURT REHBERG**

**ORDER**

(Filed November 26, 1997)

A petition to establish paternity was filed in the above styled cause alleging that Kurt Rehberg, the Defendant, was the father of the Plaintiff's, Kathy Ryan, child. The petition alleged that the Defendant had acknowledged paternity. In addition to seeking the establishment of paternity the petition raised issues of custody and visitation.

The Defendant responded to the complaint by filing a motion to dismiss for lack of subject matter jurisdiction, alleging that, inter alia, paternity had already been established by law by virtue of the fact that a consenting affidavit as provided in Section 382.013 (6)(b), Florida Statutes, had been executed by both Plaintiff and Defendant and that the consenting affidavit was on file with the Florida Bureau of Vital Statistics and that a birth certificate naming Defendant as the father of the child in question had been issued. Certified copies of both of these documents were filed along with the motion to dismiss and are unchallenged by Plaintiff.

The motion to dismiss was denied by the original trial judge. After the denial, Defendant filed an amended answer and counterclaim. The counterclaim sought a determination of custody and visitation. Eventually, before a successor

judge, a trial was held on all of the issues raised in the pleadings and a Final Judgment of Paternity was issued. Defendant had raised the jurisdictional issue again before the successor judge and it was again denied. After the trial, Defendant filed a motion to disqualify the successor judge and it was granted. The Defendant timely filed a motion to reconsider all of the rulings made by the disqualified judge and, pursuant to Rule 2.160 (h), Rules of Judicial Administration, this court is reconsidering Defendant's motion to dismiss on subject matter jurisdictional grounds.

Chapter 742, Florida Statutes, governs paternity actions. Section 742.011, Florida Statutes, provides in material part that proceedings may be brought in circuit court by any man or woman who has standing to determine the paternity of a child "when paternity has not been established by law or otherwise." Section 742.10, Florida Statutes, establishes that Chapter 742, Florida Statutes, ". . . provides the primary jurisdiction and procedures for children born out of wedlock". The section goes on to say that when a consenting affidavit is executed, as was in the instant case, "it shall constitute the establishment of paternity for purposes of [Chapter 742]".

Essentially Defendant argues that since he and Plaintiff had executed the consenting affidavit statutorily contemplated by the provisions cited above, paternity was already established "by law or otherwise" and consequently the paternity action filed was not allowed and therefore the court lacked subject matter jurisdiction to proceed.

Apparently this is a matter of first impression in Florida, although the dissent in *Womack v. Cook*, 634 So.2d (Fla. App. 5 Dist. 1994) articulates to some degree Defendant's position.

Applying a plain reading to the statutory provisions which pertain to paternity actions, it appears that the court is not

permitted to consider a paternity action under the undisputed facts of the instant case. The fact that the Defendant filed a counterclaim seeking nothing more than what was the subject matter of the paternity petition does not confer subject matter jurisdiction on the court. See, *Fox v. Webb*, 495 So.2d 879 (Fla. App. 5 Dist. 1986) for a jurisdictional analogy.

**Accordingly, it is Hereby Ordered and Adjudged** that the Defendant's motion to dismiss be **granted**, and the Final Judgment previously entered herein be vacated.

DONE and ORDERED this November 25, 1997.

/s/ Durand J. Adams, Circuit Judge

Copy to: Melton H. Little, Esquire
519 13th Street West
Bradenton, Fl. 34205

Kurt Rehberg
P.O. Box 14151
Bradenton, Fl. 34280

/s/ STATE OF FLORIDA, COUNTY OF MANATEE
this is to certify that the forgoing is a true and correct copy of the documents on file in my office.
Witness my hand and official seal this 26th day of November 1997 R.B. SHORE Clerk of the Circuit Court By: illegible signature D.C.

**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE ELEVENTH CIRCUIT**

KURT REHBERG, Individually, and as Next Friend on behalf of his daughter the minor child S.R.

VS.

No. 98-2352 Non-Argument Calendar
D.C. Docket No. 97-CV-2518-T-23E

STATE OF FLORIDA; et al.

Appeal from the United States District Court for the Middle District of Florida

(Filed May 19, 1999)

Before ANDERSON, Chief Judge, TJOFLAT and DUBINA, Circuit Judges.

PER CURIAM:

We affirm the district court's denial of appellant's application for a preliminary injunction prohibiting the Florida District Court of Appeal from entertaining an appeal arising out of the dismissal of a paternity action filed by the mother of appellant's minor child. Section 2282 of Title 28 of the United States Code precludes the district courts from enjoining state court proceedings.

AFFIRMED.

/s/ FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT MAY 19, 1999 THOMAS K. KAHN CLERK

**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE ELEVENTH CIRCUIT**

KURT REHBERG, Individually, and as Next Friend on behalf of his daughter the minor child S.R.

VS. No. 98-2352 Non-Argument Calendar
D.C. Docket No. 97-CV-2518-T-23E

STATE OF FLORIDA; et al.

Appeal from the United States District Court for the Middle District of Florida

(Filed July 12, 1999)

Before ANDERSON, Chief Judge, TJOFLAT and DUBINA, Circuit Judges.

BY THE COURT:

Appellant's motion for clarification is GRANTED IN PART. The following shall be substituted for the last sentence in this Court's May 19, 1999 opinion:

Section 2283 of Title 28 of the United States Code precludes the district courts from enjoining state court proceedings.

/s/ FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT JULY 12, 1999 THOMAS K. KAHN CLERK

**IN THE DISTRICT COURT OF APPEAL OF FLORIDA SECOND DISTRICT**

KATHY RYAN
n/k/a KATHY COCHRANE,
Appellant,

V. Case no. 97-05413

KURT REHBERG,
Appellee.

Opinion filed October 27, 1999.

Appeal from the Circuit Court for Manatee County; Durand J. Adams, judge.

John M. Gillies, Bradenton, for Appellant.

Kurt Rehberg, pro se.

SALCINES, Judge.

Kathy Ryan appeals a posttrial order vacating the final judgment in this action. The trial court erred in vacating the order appealed and reinstate the final judgment.

In early July 1994, Ms. Ryan filed a petition to establish paternity pursuant to chapter 742, Florida Statutes (1993), regarding daughter (footnote 1). In addition to a judicial determination of paternity, Ms. Ryan requested that the trial court declare her the primary residential parent, establish shared parental responsibility with reasonable visitation to Mr. Rehberg, awarding her support, and order Mr. Rehberg to maintain insurance benefits for their daughter. To support her requests for relief incidental to paternity, Ms. Ryan included in her petition a Uniform Child Custody Jurisdiction

Act statement as required by section 61.132, Florida Statutes (1993). It was undisputed that Mr. Rehberg was named as father on the child's birth certificate and he never contested his biological status. At the time Ms. Ryan filed her petition, the law did not clearly set forth the mechanism by which a mother could obtain relief incidental to undisputed paternity but chapter 742 appeared to be the appropriate statute under which to proceed.

Mr. Rehberg filed a motion to dismiss for lack of subject matter jurisdiction. He maintained that the exclusive basis of Ms. Ryan's petition was section 742.011, Florida Statutes (1993), and since paternity of the child had never been contested, Ms. Ryan's claim could not be considered by the trial court. The trial court rejected his argument, denied his motion to dismiss, and directed him to file an answer. Mr. Rehberg filed an amended answer and counterclaim. In count I of his counterclaim, he sought affirmative relief in the form of custody, visitation, and child support, and specifically requested that the trial court "take jurisdiction of the parties and the subject matter herein and, upon final hearing, enter a Final Judgment on the issues raised in this Counterclaim[.]" In Count II of his counterclaim, Mr. Rehberg petitioned the trial court to change his daughter's last name from Ryan Rehberg pursuant to section 68.07, Florida Statutes (1993).

On February 22, 1995, the case proceeded to trial and Mr. Rehberg renewed his motion to dismiss which was again denied. Thereafter, a "Final Judgment of Paternity" was entered. Mr. Rehberg then filed a motion to vacate the final judgment, which was denied.

Mr. Rehberg appealed the final judgment, but his appeal was dismissed by this court. See *Rehberg v. Cochrane* 688 So.2d 924 (Fla. 2nd DCA 1996). The Florida Supreme Court subsequently denied Mr. Rehberg's petition for a writ of prohibition. See *Rehberg v. Second Dist. Court of Appeal*,

675 So.2d 928 (Fla. 1996).

After the appellate courts rejected his attacks on the final judgment, Mr. Rehberg again raised his motion with the trial court. On October 15, 1997, a successor judge rendered an order in which he determined that Mr. Rehberg's motion to dismiss was not barred by res judicata (footnote 2). The judge further agreed to hear and decide Mr. Rehberg's argument regarding subject matter jurisdiction. Following a hearing on the issue of subject matter jurisdiction, on November 26, 1997, the successor judge rendered an order granting the motion to dismiss and vacating the final judgment. That posttrial order is the subject of this appeal.

The successor judge determined that the trial court lacked subject matter jurisdiction because Ms. Ryan had no recourse under the paternity statute, chapter 742, in that paternity was not disputed. However, both she and Mr. Rehberg had sought relief for a determination of other matters concerning their child rather than only a declaration of paternity. Indeed, the final judgment actually addressed the rights and responsibilities of the parties as to support, custody, and visitation.

This court considered the nature of subject matter jurisdiction in *Beach Park Development Corp. v. Remhof*, 673 So. 2d 912 (Fla. 2nd DCA 1996). In that case, we looked not to the particular case but instead to the "class of case" to determine that the trial court had subject matter jurisdiction over at least one aspect of a permissive counterclaim. In the present matter, the trial court clearly had subject matter jurisdiction over the class of cases pertaining to child support, custody, and visitation.

This matter is remanded for reinstatement of the final judgment.

NORTHCUTT, A.C.J., and CASANUEVA, J., Concur.

Footnote 1: The action was instituted within seven months of the child's birth.

Footnote 2: The successor judge initially granted Mr. Rehberg's motion for reconsideration because his predecessor, who had entered the final judgment, had subsequently entered an order of recusal in response to Mr. Rehberg's verified motion to disqualify the judge. He noted that in both the appeal to this court and the petition for writ of prohibition filed with the supreme court, Mr. Rehberg had raised the issue of subject matter jurisdiction. He opined that "[o]rdinarily, if raised as a defense even to successive motions on the same subject matter, the doctrine of res judicata will act as a bar to re-litigation of legal issues involving subject matter jurisdiction". In Mr. Rehberg's case, however, the successor judge determined that res judicata did not preclude the trial court's reconsideration of the final judgment because "Rule 2.160, Rules of Judicial Administration, provides in subsection (h) that prior legal ruling by a disqualified judge may be reconsidered and vacated or amended by a successor judge when a motion for reconsideration has been timely filed". This order was not appealed and the parties have not raised any issue pertaining to res judicata as applied to the present case. Because our ruling on the merits of the case is dispositive, we do not address the application of res judicata to the present matter.

**SUPREME COURT OF FLORIDA**

TUESDAY, APRIL 18, 2000

AMENDED ORDER
CASE NO.: SC97105
Lower Tribunal No.: 2D97-05413

KURT REHBERG
Appellant

vs.

KATHY RYAN, ETC.
Appellee

Appellee's Motion to Dismiss is granted and the above styled case is dismissed.

SHAW, WELLS, PARIENTE, LEWIS and QUINCE, JJ., concur.

A True Copy
Test:

/s/ Debbie Causseaux Acting Clerk, Supreme Court

/s/ seal of the Supreme Court of Florida

bm
Served:

HON. JAMES R. BIRKHOLD, CLERK
KURT REHBERG
MELTON H. LITTLE
HON. DURAND ADAMS, JUDGE
HON. RICHARD B. SHORE, CLERK